

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Meer Mahomed Hossein v. Alexander John
Forbes, from the High Court of Judicature
at Fort William in Bengal ; delivered
June 24th, 1874.*

Present :

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THE Appellant, the Defendant in the suit, represents the grantees of a talook under a sunnud which was made in 1775 of certain lands, the rent reserved at that time being Sanwat Azeemabadee rupees 2,599. The Plaintiff represents a person who purchased the zemindary in which the talook was situate at an auction sale ; and he, as representative of the zemindar, claimed in the first instance to enhance the rent to the present value of the lands. He sought to raise the rent of 2,599 Azeemabadee rupees to 8,465. 2. 0. Company's rupees. The High Court held that under Act X. of 1859 he was not entitled to enhance. Act X. of 1859, Section 15, says,—“ No dependent talookdar, or other
“ person possessing a permanent transferable
“ interest in land intermediate between the
“ proprietor of an estate and the ryots, who in
“ the provinces of Bengal, Behar, Orissa, and
“ Benares holds his talook or tenure (otherwise
“ than under a terminable lease) at a fixed
“ rent which has not been changed from the
“ time of the permanent settlement, shall be

“ liable to any enhancement of such rent, any-
“ thing in Section 51, Regulation VIII., 1793,
“ or in any other law to the contrary notwith-
“ standing.” They found that from the time of
the permanent settlement down to the time when
Sicca rupees were converted into Company’s
rupees in 1835, the Defendant and his pre-
decessor had paid 2,107 Sicca rupees, in lieu
of 2,599 Azeemabadee rupees. That rent could
not be changed now even if it could be shown
that the calculation under which the 2,599
Azeemabadee rupees were converted into 2,107
Sicca rupees was erroneous. It would be
impossible now to go back to the grant
of 1775 and to say that the 2,107 Sicca
rupees, which has been the rent paid from
the time of the permanent settlement, is
now to be changed because it originated out
of a grant by which 2,599 Sanwat Azeema-
badee rupees were reserved. The High Court
held that this was not an enhancement of the
rent, but merely a valuation of the old rent
of 2,599 Azeemabadee rupees, and therefore
they allowed the Azeemabadee rupees to be
converted into Company’s rupees according to
a fresh calculation.

The judge found that there had been no
change except the conversion. He says,
“ Both parties having been called upon to
“ adduce evidence on these points,” those
were the two issues which the High Court
had sent down to be tried, “ the Appellants
“ have filed dakillas or receipts from 1241 M. S.
“ to 1264 M. S., with the exception of 1262
“ M. S., and which have been attested by
“ Moonshee Jowahir Ali on their behalf. Those
“ documents show how much they paid in each
“ year, and to a certain extent prove that the
“ jummah has not been changed during those
“ years.” The receipts show that the jummah

was paid in Company's rupees, and therefore to alter the amount of Company's rupees now you must go back beyond the permanent settlement to show that these Company's rupees, which have been paid for more than the last 20 years, were too small an amount as compared with the 2,599 Azeemabadee rupees reserved in 1775. He says, "Attested copy of an urzee of Baijnath Sing has also been filed in reply to a perwannah issued by the collector. He was surburaker of the property from 1243 to 1252 M. S. This paper shows that in May 1828, or 1236 M. S., the rent of the istemrar was 2,107 Sicca rupees." He says that this document shows that at that time, viz.; May 1828, the rent was 2,107 Sicca rupees. "From the copy of the sunnud filed in former suits the rent was fixed at 2,599 Sanwat rupees; $8=2\frac{1}{2}$ Sanwat Azeemabadee rupees. The document above mentioned shows that the rent has been changed into 2,107 Sicca rupees, $9=10\frac{1}{2}$ Sicca rupees; and again, according to the batta, allowed in Sicca rupees at the rate of 6 rupees 10 annas 8 pies per cent., changed to the equivalent in Company's rupees of 2,248 rupees 1 anna 8 pies. Beyond this equivalent in the rupees current at different eras, no change can be discovered of the rent of the istremrar having ever been really changed since the grant of the sunnud in 1795 A.D. The Respondent, Mr. A. J. Forbes, has submitted no evidence of any kind to show the contrary, or to rebut the presumption that the land has been held at that rent from the time of the permanent settlement." He then goes on, and in a note at the foot of his judgment he says:—"With reference to the second issue, namely, the difference, if any, between the Sanwat Azeemabadee rupees and the Company's rupees, the claim for the excess having been dismissed, there is no necessity to go into the

“ matter. Regulation 35 of 1793, section 14,
“ which gives the different rupees current at the
“ time, clearly lays down that 96 old Patna
“ Sanwats are equivalent to 100 Sicca rupees of
“ the 19th Sun, and to reduce Sicca rupees into
“ Company’s, the sum of 6 rupees 10 annas
“ 8 pies per cent. is allowed, *i.e.* 106 rupees
“ 10 annas 8 pies Company’s rupees equal to 100
“ Sicca rupees.” Then he says, “ See Muller’s
Tables.” Now the regulation to which the
learned judge refers is Regulation 35 of 1793.
It recites that it was necessary that there should
be no other coin in circulation or in use except
the Sicca rupee of the 19th Sun, and they state
the mode in which that was to be brought about.
Having stated that Sicca rupees only should be
received at the Treasury in payment of revenue,
that they should be received in payment for salt,
they prohibited parties from making contracts
after a certain date in any other coin than the
Sicca rupee, stating that if they entered into any
such contract for any sum of money excepting
Sicca rupees the contract should not be enforce-
able in a court of law. Then they say, “ by the
“ operation of these rules the various sorts of old
“ and light rupees must in a course of time fall
“ to their intrinsic worth compared with the
“ Sicca of the 19th Sun, as they will produce no
“ more in the mint, and to which they will
“ necessarily be brought to be converted into
“ Siccas as they will be no where passable or in
“ demand as coin from being nowhere a measure
“ of value.” Then after this regulation it appears
that the 2,599 rupees were, by arrangement
between the parties, the one who was bound to
pay the rent and the other who was entitled to
receive it, converted into 2,107 Sicca rupees.
That was before the permanent settlement.
The permanent settlement in this district was
made in 1802. That is stated in the Respon-

dent's case. The rent having been converted into Sicca rupees before the permanent settlement in 1802,—the permanent settlement was made with the Plaintiff's predecessor,—and the Government in fixing the amount of revenue which was to be paid under the permanent settlement looked to the assets of the estate, and they must have taken the assets of this estate as 2,107 Sicca rupees, and estimated the revenue which the zemindar would have to pay accordingly. The permanent settlement was fixed upon the basis that the rent which was payable under the pottah was 2,107 Sicca rupees, and from the time of the permanent settlement that is proved to have been the only amount paid in discharge of rent up to the time when the Sicca rupee was abolished. That rupee was abolished by Act XIII. of 1836. By section 1 it was enacted that "from the 1st of January 1838 the Calcutta Sicca rupee shall cease to be a legal tender in discharge of any debt, but shall be received by the collector of land revenue and at all other public treasuries by weight and subject to a charge of one per cent. for recoinage." Then it states that the new coin, which is called the Company's rupee, should be taken at the rate of 16 new or Company's rupees for every 15 Calcutta Sicca rupees of due weight, that is to say, the Company's rupee was equal to $\frac{15}{16}$ ths of a Sicca rupee.

From that time, then, the Defendant could not continue to pay his rent in Sicca rupees, because the Sicca rupees had been abolished, and it had been enacted that no tender should be made in Sicca rupees. It was therefore necessary to convert the 2,107 Sicca rupees into Company's rupees, and that was done by adding the difference between the Company's rupees and the Sicca rupees, and from that time the 2,107 Sicca rupees which had been paid from the

time of the permanent settlement were converted into 2,248 Company's rupees, which were paid from that time down to the time of the commencement of this suit.

It appears to their Lordships that if any question as to the value of the Azeemabadee rupees could have been entered into at all in the present suit the conduct of the parties in dealing with the 2,599 Azeemabadee rupees for upwards of 50 years as being the equivalent of 2,107 Sicca rupees would have been much stronger evidence than any evidence which is given in this case by Mr. Palmer from the old almanac, or by Mr. Judah from Prinsep's tables, in which he stated that there was no actual valuation of the Sanwat Azeemabadee rupee. "He states "the information will be found in Prinsep's "tables, in which he also admits some errors "are to be found; at the same time he states "that those tables do not give the equivalent "of Sanwat Azeemabadee in Company's rupees," they only give it in Siccas.

Now the judge upon that evidence, finding that from the time of the permanent settlement down to 1836 2,107 Sicca rupees were the only rent which had been paid, and that from 1836 these Sicca rupees had been converted into 2,248 Company's rupees, held that the Plaintiff was not entitled to recover from the Defendant at a higher rate than that which had been paid from 1835 to the time of the commencement of the suit as the equivalent of 2,107 Sicca rupees, and dismissed the Plaintiff's suit. The High Court, however, thought that the Plaintiff was entitled, at this distance of time—notwithstanding the mode in which the parties had dealt with it, notwithstanding the fact that no Azeemabadee rupees had ever been paid as rent from the time of the permanent settlement down to the time of the commencement of the suit—to recover at

the rate of 2,599 Sanwat Azeemabadee rupees, to be converted into Company's rupees; and according to the evidence which has been given in the cause, they converted the 2,599 Sanwat Azeemabadee into Company's rupees at a higher rate than 2,248. The case was before the High Court upon special appeal, and therefore in strictness they had nothing to do with the evidence in the cause. There was no evidence upon which (even if they could have been allowed to do so by law) they could find that 2,599 Sanwat Azeemabadee rupees was of a higher value than the 2,248 Company's rupees into which they had been converted; but even if they had the power of doing that, and had done so, the parties had agreed from a period antecedent to the permanent settlement that the 2,599 Sanwat Azeemabadee rupees should be converted into a different coinage, namely, the Sicca rupee at the rate which had been paid down to 1836, and which in 1836 had been converted into the statutable equivalent in Company's rupees.

Under these circumstances their Lordships think that the High Court was wrong in overruling the decision of the judge who tried the issues, and they will therefore humbly recommend Her Majesty that the decision of the High Court should be reversed, that the decision of the judge of the lower court should be affirmed, with the costs of this appeal and the costs in the High Court.

1870
The first of the 1870s was a period of
great change for the country. The
Civil War had just ended, and the
country was still recovering from the
devastation of the conflict. The
economy was in a state of depression,
and many people were struggling to
make ends meet. The government was
also facing a number of challenges,
including the Reconstruction of the
South and the issue of slavery.
Despite these difficulties, the
country was beginning to move
forward. The Reconstruction era
was a time of great progress, and
the country was slowly recovering
from the war. The economy was
beginning to grow, and many
people were finding work and
making a living. The government
was also working to rebuild the
South and to ensure that the
rights of all citizens were
protected. The 1870s were a
time of great change and
progress for the country.